

- 37** **OBSERVERS:** All parties are entitled to representation at the polling location(s) by observers of their own selection, subject to the approval of the Regional Director [§ 2422.23(h)]. This regulation also applies to mail ballot elections that a region processes in the Regional Office.
- 37.1** **Function:** The observers represent their principals when assisting the agent(s) in conducting the election. The observers are responsible for seeing that the election is conducted in a fair and impartial manner so that each voter may cast a secret ballot in a free and uncoerced atmosphere. Their principal duties include identifying the voters; marking the eligibility list of those voting; challenging, for good cause, the eligibility of particular voters; observing the voting booths; safeguarding the ballot box; and verifying the accuracy of the counting of the ballots. Specific instructions for observers, including types of prohibited conduct, are set forth in [FLRA Document 1012](#), Instructions to Election Observers (see also [CHM 39.7](#)). Unless specifically authorized by the principle representatives, observers do not have the authority to act on the representative's behalf in making decisions at the count, e.g., resolving challenged ballots, deciding to void ballots, etc. (see [CHM 47.7.3](#)).
- 37.2** **Number:** The provision for observers is usually discussed during the election agreement conference ([CHM 28.6](#)). During this conference, the agent explains that parties are permitted to station an equal number of authorized observers in the polling place at any given time. Alternative observers may be used during relief periods or as replacements. (See [CHM 40.13](#) regarding all observers signing the Certification of Conduct of Election). Normally, one set of observers sits at the checking table and marks off the voters on the eligibility list. In elections exceeding 200 voters voting per hour, a second set of observers is assigned to sit near the ballot box to assure that only one voter at a time enters the booth and that all ballots are deposited in the ballot box. The observers may not deposit a ballot for any voter or otherwise handle any ballots.

The Regional Director ultimately determines the number of observers and their entitlement to official time pursuant to 5 U.S.C. 7131(c). The party requesting the observer(s) is responsible for payment of any travel and per diem expenses (§ 2429.14(b)). Any questions about changing the observer's official working schedule or working overtime while as an observer is resolved at the election agreement meeting. The agent does not get involved in these discussions as the Authority cannot require the agency to change an employee's duty hours or to pay the employee(s) overtime.

37.3 Request for observers: Absent agreement by the parties, the parties make their request to the Regional Director for named observers in writing not less than fifteen (15) days prior to the election [§ 2422.23(h)(1)]. The regulations require the request to name and identify the observers requested. Copies are served on the other parties and a written statement of such service is filed with the Regional Director. The Regional Director may grant an extension of time for filing a request for specifically named observers for good cause where a party requests such an extension or on the Regional Director's own motion. Objections to a request for specific observers are filed with the Regional Director with supporting reasons within five (5) days after service of a copy of the request. Copies are served on the other parties and a written statement of such service is filed with the Regional Director.

The Regional Director's ruling on requests for, and objections to, observers is final and binding and is not subject to the filing of an application for review with the Authority. Absent agreement, the parties use the FLRA Form 60, Request for Appearance of Authorized Observers when making their request.

37.4 Eligibility to act: Sections 2422.23(h)(2) and (3) of the regulations set forth who may act as an observer.

37.4.1 An agency or activity may use as its observers any employees who are not eligible to vote in the election, except:

- a. Supervisors or management officials;
- b. Employees who have any official connection with any of the labor organizations involved (such as hold an office in the labor organization); or
- c. Non-employees of the Federal government.

37.4.2 A labor organization may use as its observers any employees eligible to vote in the election, except:

- a. Employees on leave without pay status who are working for the labor organization involved; or
- b. Employees who hold an elected office in the union.

A party may not use as an observer any person who is not authorized to act under the regulations even though the other parties agree to waive their right to file an objection on the use of an unauthorized observer.

- 37.5 Military personnel on active duty:** Military personnel on active duty are not considered employees of the Executive Branch of the Federal government and are not eligible to act as observers. However, where such personnel are also regularly employed in a civilian capacity in the unit involved, they are considered eligible employees and may be utilized as observers for a labor organization in civilian attire.
- 37.6 Head observer:** Where each party is represented by more than one observer, one of them is designated "head observer." This observer is empowered by the party s/he represents to enter into binding agreements regarding election questions that may arise during the election. In addition, this observer serves as a communication link with the party's designated representative, or completes other tasks as they arise (such as finding replacement observers for the ones who fail to appear at the assigned poll).
- 37.7 Waiver of right to have an observer:** Parties may waive the opportunity to be represented by observers, either expressly or by default (no observer appearing). Agents ensure that all parties are aware of their right to have an observer present at every stage of the election process ([CHM 39](#) - responsibility when observer fails to appear for election).
- 37.8 Mail ballot elections:** Parties are entitled to have observers present in the Regional Office when ballots are mailed and counted pursuant to an election agreement. The region actually prepares the mail ballot packages. If all parties have an observer present at the mail-out, the observers check-off the eligibility list as the mail ballot package is prepared for each eligible employee and otherwise observe the mailing and count of the ballots. If all of the parties are not represented by an observer, the observer's only function is to observe the mailing and count of ballots. Any observer present is asked to sign a Certification of Conduct of Election ([CHM 43](#)).
- 37.9 Instructing the observers:** Prior to the opening of the polls, the agent instructs the observers about their duties. All observers, including alternates, are assembled at the same time to be briefed concerning all aspects of the election. These meetings usually occur at least 30 minutes prior to the opening of the polls. In large elections, however, the region may schedule the observer meeting on the day before the election is scheduled.

Observers are given a copy of the Instructions to Election Observers, [FLRA Doc. 1012](#). In addition to the instructions outlined in FLRA Doc. 1012, principal areas of instruction relate to the procedure for checking off the

names of the voters as they appear to vote, the challenged ballot procedure, assistance to handicapped voters, disposition of the marked ballots and safeguarding the ballot box. Each of these topics is discussed in subsequent sections in this *CHM* and the agent reviews them prior to instructing the observers ([CHM 39.7](#)).

Observers are required to wear an official FLRA Observer badge. The agent provides the badges before the polls are opened and collects them when the polls close, or after the count of the ballots. No other insignia including any type of electioneering campaign material may be worn or exhibited by observers during their service as observers. [CHM 46.2](#). This restriction does not apply to Federal government identification badges which are required to be worn at all times at certain agencies or activities.